

21804

DECISION



118363
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-204966

DATE May 11, 1982

MATTER OF: Dictaphone Corporation

DIGEST:

1. A contracting officer properly refused to allow a bidder to supply technical information after bid opening to show that the model number specified in the bid met the specifications and rejected the bid as nonresponsive, where publicly-available commercial literature on that model clearly showed that it did not conform to the specifications.
2. A nonresponsive bid may not be corrected on the basis of mistake to make it responsive.
3. GAO will not consider a protester's allegations that he reasonably interpreted the solicitation to require designation of model numbers where the model number indicated in the protester's bid represented equipment that clearly did not conform to the specifications.
4. Protest filed more than 10 working days after the protester's receipt of the information on which the protest is based is untimely.

Dictaphone Corporation protests the award of a contract for dictation equipment to Sony Corporation of America under solicitation No. DTFA01-81-B-31018 issued by the Federal Aviation Administration (FAA). Dictaphone objects to the determination that its bid was nonresponsive. Dictaphone also questions the sufficiency of the solicitation and the propriety of the award to Sony.

We deny Dictaphone's protest as it relates to the responsiveness issue and dismiss the remainder.

The FAA sought bids for various items of dictation equipment using interchangeable standard cassettes. The solicitation set forth detailed performance specifications for that equipment. Dictaphone's bid, which was the lowest of the two bids received, specified the quantity, price and model numbers of the equipment the firm intended to supply. Sony's bid merely indicated the quantity and price of the equipment it would furnish. After bid opening, Dictaphone wrote the contracting officer alleging that the firm's designation of a Model 193 central recorder, an endless-loop recording device, was a typographical error and that the correct model number was 293. Dictaphone then submitted commercial literature on both models as well as on the other equipment it specified in its bid.

The contracting officer determined that Dictaphone's bid was nonresponsive because Dictaphone's commercial literature showed that Model 193 was incapable of using interchangeable standard cassettes. The contracting officer also determined that Dictaphone's commercial literature did not sufficiently describe the technical aspects of the other models offered. The contract therefore was awarded to Sony.

Dictaphone objects to the contracting officer's refusal to permit the firm to supplement its commercial literature with technical manuals. Dictaphone also objects to an on-site visit by FAA technical staff to a Sony dealership to view Sony's equipment; the protester asserts that the contracting officer unfairly failed to give Dictaphone the same opportunity as he did Sony to show intent to comply with the solicitation. On that basis, Dictaphone concludes that the contracting officer's determination that its bid was nonresponsive was improper. We disagree.

A bidder's listing of unsolicited model numbers in his bid creates an ambiguity in the bid. See 50 Comp. Gen. 8 (1970). The ambiguity arises because the inclusion of model numbers is not a clear indication of whether the bidder is offering to comply completely with the specifications, or whether he merely is offering to supply equipment that may or may not conform to the specifications. See Sentinel Electronics, Inc., B-185681, June 24, 1976, 76-1 CPD 405. Therefore, a contracting officer must reject such a bid as nonresponsive unless he can determine from commercial

literature that was publicly available prior to bid opening that those models conform. See Lift Power Inc., B-182604, January 10, 1975, 75-1 CPD 13.

Dictaphone's commercial literature clearly showed that Model 193 did not conform to the specifications because that model is an endless-loop recording device that is incapable of using interchangeable standard cassettes. Therefore, the submission by Dictaphone of technical information on Model 193, had it been allowable, would not have remedied that model's nonconformity. Thus, the contracting officer properly rejected Dictaphone's bid as nonresponsive.

We also reject Dictaphone's position to the extent it implies that the contracting officer should have allowed Dictaphone to correct that firm's alleged typographical error in specifying Model 193. It is well-settled, that a nonresponsive bid may not be corrected after bid opening to make it responsive. See Venco Corporation, B-137318, February 15, 1977, 77-1 CPD 113.

Dictaphone complains that it reasonably interpreted the solicitation to require designation of model numbers and that the FAA failed to include a mandatory clause notifying bidders that designation of model numbers would result in rejection of the bid. Our consideration of those matters, however, would not alter the fact that Dictaphone offered equipment that did not conform to the specifications. Therefore, we need not consider those complaints.

Finally, Dictaphone alleges that the award to Sony was improper on various grounds:

1. Sony's bid was nonresponsive because a pre-award evaluation report dated September 14, 1981, noted the inadequacy of Sony's commercial literature and the necessity for an on-site visit;
2. the contracting officer erred in not applying a Buy American evaluation factor to Sony's bid;
3. Sony improperly failed to indicate in its bid that it was represented by a third party; and

4. Sony is not a labor surplus area concern.

Dictaphone first protested these matters on January 18, 1982, in its comments to the agency's report. Under a Freedom of Information Act request, however, Dictaphone appears to have had in its custody on November 24, 1981, all documentation relating to the award to Sony. In any event, Dictaphone acknowledged receipt of the pertinent documents in a letter received by this Office on December 24, 1981. Our Bid Protest Procedures require that a protest be filed with this Office not later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1981). Since Dictaphone knew or should have known the basis of this portion of its protest by December 24, we will not consider these allegations because they are untimely. See Texstar Plastics Company, Inc., B-201105, September 18, 1981, 81-2 CPD 223.

The protest is denied in part and dismissed in part.

for Winston J. Austin
Comptroller General
of the United States